

Appl. No.: 10/572,710
Reply to Office Action of: 11/13/2008

REMARKS

Claims 1-11, 13, 14, and 24-26 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claims have been amended above to address the examiner's concerns.

Claim 26 was rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The claim has been amended above to address the examiner's concerns. In particular, claim 26 now claims a memory instead of a computer readable medium. Support for this amendment may be found on page 2, lines 26-32, page 4, lines 5-13, page 7, lines 2-7, and Fig. 1.

Claims 1-9, 11, and 13-25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Kaplan (US 6,690,358). Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Kaplan (US 6,690,358) in view of Kalinski et al. (US 2003/0174307). The examiner is requested to reconsider these rejections.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Claim 1 recites, *inter alia*, "a processor configured to ... control the display to display, to a user of the mobile cellular telephone, a bar and an item, at a position within the bar dependent upon the received indication, the position of the item within the bar representative of the sense and

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amount of inclination of the mobile cellular telephone in the first plane".

In contrast, Kaplan discloses a portable digital assistant (PDA) 100 that includes a screen 110, activation buttons 12, 13, 14 and accelerometers 10, 11. The screen 110 may display a cursor 120 and pushing one or more of the buttons 12, 13, 14 may enable movement of the cursor 120 about the screen 110. The accelerometers 10, 11 provide an output signal that is related to the angle of the accelerometers' major axis away from the horizontal plane. The output signal of the accelerometer 10, 11 is received and processed by the processor 17 which may control the screen 110 accordingly.

If button 13 is pushed, the cursor 120 becomes responsive to the orientation of the PDA 100. As mentioned on column 4, lines 5 - 19 the relationship for the movement of the cursor 120 in response to tilting the PDA 100 may be one in which the cursor acts like an air bubble in a carpenter's level. If button 14 is pressed, the processor 17 may use the accelerometer 10, 11 output signal to control the panning of an image displayed on the screen 110.

Applicants' respectfully submit that the examiner has mischaracterized the teaching of Kaplan and that it would not be obvious to a person skilled in the art to adapt the teaching of Kaplan to fall within the scope of applicants' claimed invention.

In the Office Action, the examiner alleges "it would be obvious to one of ordinary skill in the art to modify the teaching of Kaplan so that the actual display emulated a

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spirit level, since Kaplan suggests doing such a thing". Applicants' respectfully submit that Kaplan does not teach that the screen 110 may emulate a spirit level. Kaplan merely teaches that the movement of the cursor 120 has a relationship to the tilt of the PDA 100 that is like an air bubble in a carpenter's level. From column 1, lines 7 and 8 it is clear that Kaplan is concerned with how to improve cursor control and that the above mentioned relationship is one way to improve cursor control.

Applicants' claimed invention claims "the processor is configured... to control the display to display, to a user of the mobile cellular telephone, a bar and an item, at a position within the bar dependent upon the received indication, the position of the item within the bar representative of the sense and the amount of inclination of the mobile cellular telephone in the first plane". From this portion of claim 1, it is clear that the movement of the item is restricted to being within the bar. It would be contrary to the teaching of Kaplan to restrict the movement of the cursor to within a bar since it would render the cursor unusable. In particular, the cursor would be prevented from accessing and selecting items which are positioned outside of the bar.

Furthermore, it would not be obvious to a person skilled in the art to adapt Kaplan to include an additional inclinometer mode as claimed in claim 1, since Kaplan is only concerned with the control of a cursor. Kaplan is not concerned with adding new functional modes to a hand held device.

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In the present case, there is no teaching, suggestion, or motivation, found in either the reference itself or in the knowledge generally available to one of ordinary skill in the art, to provide a mobile cellular telephone comprising ... a processor configured to ... control the display to display, to a user of the mobile cellular telephone, a bar and an item, at a position within the bar dependent upon the received indication, the position of the item within the bar representative of the sense and amount of inclination of the mobile cellular telephone in the first plane, as claimed in claim 1. The features of claim 1 are not disclosed or suggested in the art of record. Therefore, claim 1 is patentable and should be allowed.

Though dependent claims 2-10, 13, 14, and 24 contain their own allowable subject matter, these claims should at least be allowable due to their dependence from allowable claim 1. However, to expedite prosecution at this time, no further comment will be made.

Claim 11 claims "a processor configured to ... control the display to display, to a user of the mobile cellular telephone, a first bar, a first item, a second bar and a second item, wherein a position of the first item within the first bar is representative of the incline in the first orientation, and wherein a position of the second item within the second bar is representative of the incline in the second orientation".

Similar to the arguments presented above with respect to claim 1, Kaplan does not teach that the screen 110 may emulate a

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spirit level. Kaplan merely teaches that the movement of the cursor 120 has a relationship to the tilt of the PDA 100 that is like an air bubble in a carpenter's level. It would be contrary to the teaching of Kaplan to restrict the movement of the cursor to within a bar since it would render the cursor unusable. In particular, the cursor would be prevented from accessing and selecting items which are positioned outside of the bar. Furthermore, it would not be obvious to a person skilled in the art to adapt Kaplan to include an additional inclinometer mode as claimed in claim 11, since Kaplan is only concerned with the control of a cursor. Kaplan is not concerned with adding new functional modes to a hand held device. The features of claim 11 are not disclosed or suggested in the art of record. Therefore, claim 11 is patentable and should be allowed.

Claim 15 claims a "controlling a display to display ... a bar and an item, at a position within the bar dependent upon the detected inclination, the position of the item within the bar representative of the sense and amount of inclination of the mobile telephone in the first plane".

Similar to the arguments presented above with respect to claim 1, Kaplan does not teach that the screen 110 may emulate a spirit level. Kaplan merely teaches that the movement of the cursor 120 has a relationship to the tilt of the PDA 100 that is like an air bubble in a carpenter's level. It would be contrary to the teaching of Kaplan to restrict the movement of the cursor to within a bar since it would render the cursor unusable. In particular, the cursor would be prevented from accessing and selecting items which are positioned outside of

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the bar. Kaplan is only concerned with the control of a cursor. Kaplan is not concerned with adding new functional modes to a hand held device. The features of claim 15 are not disclosed or suggested in the art of record. Therefore, claim 15 is patentable and should be allowed.

Though dependent claims 16-23 contain their own allowable subject matter, these claims should at least be allowable due to their dependence from allowable claim 15. However, to expedite prosecution at this time, no further comment will be made.

Claim 25 claims "wherein the mobile cellular telephone has an inclinometer mode, in which the processor is configured to ... control the display to display, to a user of the mobile telephone, a bar and an item, at a position within the bar, dependent upon the received indication, wherein the position of the item within the bar provides an indication to the user of the incline of the mobile cellular telephone in the first plane, and wherein the processor is configured to position the item at a central location within the bar...".

Similar to the arguments presented above with respect to claim 1, Kaplan does not teach that the screen 110 may emulate a spirit level. Kaplan merely teaches that the movement of the cursor 120 has a relationship to the tilt of the PDA 100 that is like an air bubble in a carpenter's level. It would be contrary to the teaching of Kaplan to restrict the movement of the cursor to within a bar since it would render the cursor unusable. In particular, the cursor would be prevented from accessing and selecting items which are positioned outside of

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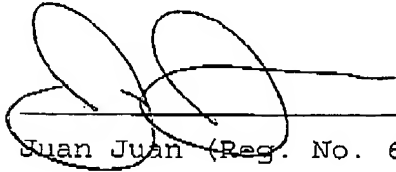
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the bar. Furthermore, it would not be obvious to a person skilled in the art to adapt Kaplan to include an additional inclinometer mode as claimed in claim 25, since Kaplan is only concerned with the control of a cursor. Kaplan is not concerned with adding new functional modes to a hand held device. The features of claim 25 are not disclosed or suggested in the art of record. Therefore, claim 25 is patentable and should be allowed.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record. Accordingly, favorable reconsideration and allowance is respectfully requested. If there are any additional charges with respect to this Amendment or otherwise, please charge deposit account 50-1924 for any fee deficiency. Should any unresolved issue remain, the examiner is invited to call applicants' attorney at the telephone number indicated below.

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Respectfully submitted,



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